

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

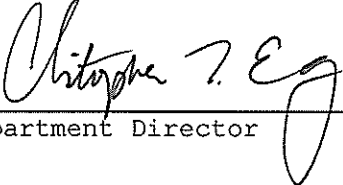
12-0499R

RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH THE NORTHSPAN GROUP, INC. TO ADMINISTER A DISASTER RECOVERY PROGRAM GRANT FOR 3% OF THE TOTAL BUSINESS LOAN DISBURSEMENT AS APPROVED BY DEED OR AN AMOUNT NOT TO EXCEED \$60,000, WHICHEVER IS LESS

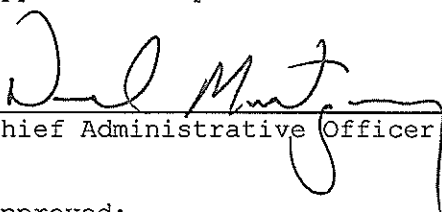
CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into a professional services agreement, substantially in the form of that on file with the City Clerk as Public Document No. _____, with the Northspan Group, Inc. to administer a Minnesota department of employment and economic development ("DEED") Minnesota investment fund ("MIF") disaster recovery program grant in an amount not to exceed 3% of the total business loan disbursement as approved by DEED or \$60,000, whichever is less, payable from Fund 235 (Duluth recovery loan program), Agency 020 (planning), Object 5319 (other professional services).

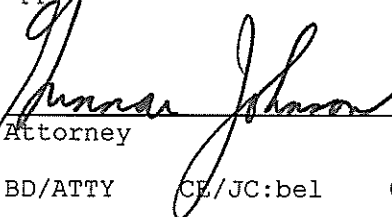
Approved:


Department Director


Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

BD/ATTY CE/JC:bel 09/26/2012

STATEMENT OF PURPOSE: This resolution authorizes a professional services agreement with the Northspan Group to administer a DEED Minnesota Investment Fund (MIF) Disaster Recover Program Grant. Northspan will be paid on an hourly basis in an amount not to exceed 3% of the business loan disbursement as approved by DEED or \$60,000 whichever is less. All administrative costs to be paid to Northspan will be funded by the DEED Grant.

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, effective as of the date of attestation by the City Clerk, by and between the City of Duluth ("the City"), and The Northspan Group, Inc. ("Service Provider"), for the purpose of rendering services to the City.

WHEREAS, desires to utilize Service Provider's professional services to provide administration of the Minnesota Department of Employment and Economic Development ("DEED") Minnesota Investment Fund Disaster Recovery Program Grant; and

WHEREAS, Service Provider has represented that it is qualified and willing to perform said services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

1. Services to be Performed.

Service Provider shall provide the services required to administer the DEED Minnesota Investment Fund Disaster Recovery Program Grant, said services more specifically identified in Exhibit A. In the event of a conflict between the terms and provisions of this Agreement and Exhibit A, the terms and conditions of this Agreement shall be deemed to be governing.

2. Compensation.

It is agreed between the parties that the Service Provider's maximum compensation for services provided herein shall not exceed 3% of the business loan disbursement as approved by DEED, or \$60,000, whichever is less payable from Fund 235 (Duluth Recovery Loan Program), Agency 050 (Planning), Object 5319 (Other Professional Services). Fees shall be disbursement billed as set forth in Exhibit A. Invoices for services rendered shall be submitted to the City and shall be accompanied by such documentation as the Director of Business and Economic Development (the "Director") shall reasonable request. Upon receipt of such request and documentation, and at such time as funds are disbursed by DEED, the Director may approve reimbursement of the Service Provider therefor.

3. General Terms and Conditions.

A. Standard of Performance.

Service Provider agrees that all services to be provided to the City pursuant to this Agreement shall be in accordance with the generally accepted standards of the profession for the provisions of services of this type.

- B. Amendments. Any alterations, variations, modifications or waivers of terms of this Agreement including contract price shall be binding upon the City and Service Provider only upon being reduced to writing and signed by a duly authorized representative of each party.
- C. Assignment. Service Provider represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the Director.
- D. Data and Confidentiality.
 - (1) The City agrees that it will make available all pertinent information, data and records under its control for Service Provider to use in the performance of this Agreement, or to assist Service Provider wherever possible to obtain such records, data and information.
 - (2) All reports, data, information, documentation and material given to or prepared by Service Provider pursuant to this Agreement will be confidential and will not be released by Service Provider without prior authorization from the City.
 - (3) All notes, reports, records and other data prepared under this Agreement shall become the property of the City upon completion or termination of the services of Service Provider. Any reuse of notes, reports, records or other data for anything other than its intended purpose will be at the City's sole risk and without liability or legal exposure to Service Provider.
- E. Records and Inspections.
 - (1) Establishment and Maintenance of Records.

Records shall be maintained by Service Provider in accordance with requirements prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a

period of six (6) years after receipt of final payment under this Agreement.

(2) Reports and Information.

Service Provider shall provide to the Director monthly reports detailing the services provided in the previous month. Service Provider shall be responsible for furnishing to the Director any other records, data and information he may require pertaining to matters covered by this Agreement.

(3) Audits and Inspections.

Service Provider shall ensure that at any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement. Service Provider will also permit the City to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

4. Contract Period.

This Agreement shall be effective upon the date of attestation by the City Clerk and shall continue for twenty-four (24) months, unless terminated earlier as provided herein. Notwithstanding the above, the term of this Agreement may be extended for an additional six-month period upon the prior written approval of the Director.

5. Termination of Services.

The City may, by giving written notice specifying the effective date thereof, terminate this Agreement in whole or in part, with or without cause. In the event of termination, all property and finished or unfinished documents, materials, and other writings prepared by Service Provider under this Agreement shall be promptly delivered by Service Provider to the City at the address provided in Paragraph 9. Service Provider shall be entitled to compensation for the performance of any unreimbursed services properly performed by it prior to the date of termination.

6. Independent Contractor.

- A. The relationship between Service Provider and the City shall be that of an independent contractor. Nothing herein shall in any way make or create any employer-employee relationship between the City and Service Provider. Except for compensation provided in Paragraph 3 of this Agreement, Service Provider's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from the City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A (Public Employees Retirement Association). Further, the City shall in no way be responsible to defend, indemnify or save harmless Service Provider from liability or judgments arising out of acts or omissions of Service Provider or its employees while performing the work specified by this Agreement.
- B. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
- C. Service Provider expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

7. Indemnity.

Service Provider agrees to defend, save harmless, and indemnify the City, its agents, and employees from any loss, cost, charge, or damage of whatsoever nature or kind arising out of, or as a result of, the performance of the work by the Service Provider, its employees, agents, or subcontractors.

8. Insurance.

- A. Service Provider shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota.
 - (1) Workers' compensation insurance in accordance with the laws of the State of Minnesota.

- (2) Public Liability and Automobile Liability Insurance with limits not less than \$1,500,000 Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; shall be in a company approved by the City; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability. An umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the City as an additional insured.
- (3) Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, 60 days' notice prior to any cancellation or modification shall be required; and in such event, Service Provider agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the statute of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.
- (4) The City shall be named as Additional Insured under the Public Liability and Automobile Liability policies, or as an alternate, Service Provider may provide Owners-Contractors Protective policy, naming itself and the City. Service Provider to provide Certificates of Insurance evidencing such coverage prior to execution of this Agreement, and certificates showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement. Service Provider shall also provide evidence of Professional Liability Insurance and Statutory Minnesota Workers' Compensation Insurance prior to execution and during the term of this

Agreement. The City does not represent or guarantee that these types or limits of coverage are adequate to protect the Service Provider's interests and liabilities.

- (5) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to the City will render any such change or changes in said policy or coverages ineffective as against the City.
- (6) The use of an "ACORD" form as a certificate of insurance shall be accompanied by two forms – (a) ISO Additional Insured Endorsement (CG-2010 pre-2004) and (b) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney's Office.

B. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Service Provider, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Service Provider, its employees, agents and representatives in the negligent performance of work covered by this Agreement.

9. Notices.

Notices shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the City of Duluth as follows: City of Duluth, 402 City Hall, 411 West First Street, Duluth, Minnesota 55802; and addressed to Service Provider as follows: Northspan Group, Inc., 221 West First Street, Duluth, Minnesota 55802, or to such other persons or addresses as the parties may designate to each other in writing from time to time.

10. Laws, Rules and Regulations.

Service Provider agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City of Duluth with respect to their respective agencies, which are applicable to its activities

under this Agreement.

11. Choice of Law.

This Agreement, together with all of its paragraphs, terms and provisions is made in the state of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota. However, litigation in the federal courts involving the parties shall be in the appropriate federal court within the State of Minnesota.

12. No Third Party Rights.

Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement.

13. Severability.

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

14. Entire Agreement.

This Agreement, including Exhibit A, constitutes the entire Agreement between the City and Service Provider and supersedes all prior written or oral agreements and negotiations between the parties relating to the subject matter hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first below shown.

CITY OF DULUTH

NORTHSPAN GROUP

Mayor

By _____
Its _____

Attest:

By _____
Its _____

City Clerk

Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

September 25, 2012

Christopher T. Eng, CEDFP
Director of Business & Economic Development
City of Duluth
402 City Hall
411 West First Street
Duluth, MN 55802

Dear Chris:

This letter is The Northspan Group, Inc.'s proposal to the City of Duluth to provide professional administration services for the Minnesota Investment Fund Disaster Recovery Program. Northspan would provide the following scope of work as part of the City of Duluth's professional services contract:

- Northspan will work jointly with City staff to prepare the Minnesota Investment Fund application requesting Minnesota Investment Fund Disaster Recovery Program funds and submit to the Minnesota Department of Employment and Economic Development (DEED).
- Northspan will have the responsibility for coordinating the application process, reviewing loan applications, preparing applications and summaries for review by the City's Loan Review Committee, and coordinating the loan approval and servicing process. These activities are detailed in the City of Duluth's Guidelines for administering Business Flood Recovery Funds awarded through the Minnesota Investment Fund.
- Northspan will monitor loans for compliance with the accepted terms and conditions including job creation and retention statistics and wage and benefit levels.
- Northspan will be responsible for ensuring that all required DEED reports are filed in a timely manner.

Northspan would provide the above services on a cost reimbursement basis billed monthly. Northspan would bill at hourly rates based on the Northspan staff person (Bob Palmquist) involved, plus direct expenses (i.e. mileage, photocopies, etc.). Northspan hourly rate for the staff involved is \$93. The hourly rate is adjusted annually to reflect changes in staff compensation and overhead costs. It is agreed between the parties that Northspan's maximum compensation for services provided herein shall not exceed 3% of the business loan disbursement as approved by DEED and in no event shall Northspan's compensation exceed \$60,000.

Should you have any questions concerning Northspan's proposal please do not hesitate to contact me. Northspan appreciates the opportunity to be of assistance to City of Duluth in this matter.

Sincerely,

Bob Palmquist
Senior Business Developer